Supreme Court, U.S.
FILED

(1)

98 227 AUG 3 1998

No. _____

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

K. W. PRUNTY, Warden, et al., *Petitioners*,

v.

JAITSEN J. SINGH, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
WILLIAM M. WOOD
Supervising Deputy Attorney General
SARA GROS-CLOREN
Deputy Attorney General
Counsel of Record
110 West A St., Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2198
Counsel for Petitioner

---

15 pp

QUESTIONS PRESENTED

1. Did the Ninth Circuit use an incorrect standard in assessing whether the prosecutor's failure to disclose evidence was material, by concluding one or more members of the jury could have viewed a witness's testimony differently?

2. Did the Ninth Circuit render a decision that conflicts with this Court's Brady v. Maryland jurisprudence by ignoring the trial evidence, including Singh's own devastating testimony, in determining the materiality issue?

LIST OF PARTIES

K. W. Prunty, Warden of Calipatria State Prison, is the Petitioner in this Petition for Writ of Certiorari.

The United States Court of Appeals for the Ninth Circuit issued a published opinion on April 27, 1998, which is the subject of this request for review.

Jaitsen J. Singh, a state inmate serving consecutive indeterminate life terms for the murders of his wife and teenage step-daughter, is the Respondent and real-party-in-interest in the underlying proceeding.

TABLE OF CONTENTS

	Page
CITATIONS OF OPINIONS AND ORDERS	1
STATEMENT OF JURISDICTION	2
CONSTITUTIONS, STATUTES OR REGULATIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	10

TABLE OF AUTHORITIES

Cases	Page
Brady v. Maryland, 373 U.S. 83 (1963)	3
Calderon v. Thompson, __ U.S.__, 118 S. Ct. 1499 140 L. Ed. 2d 728 (1998)	4
Kirkpatrick v. Whitley, 992 F.2d 491 (5th Cir. 1993)	5
Kyles v. Whitley, 514 U.S. 419 (1995)	4, 7
Singh v. Prunty, 142 F.3d 1157 (9th Cir. 1998)	4, 5
United States v. Bagley, 473 U.S. 667 (1985)	5, 7
Wood v. Bartholomew, 516 U.S. 1 (1995)	4, 8

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. ____

K. W. PRUNTY, Warden, et al., *Petitioner*,

v.

JAITSEN J. SINGH, *Respondent*.

CITATIONS OF OPINIONS AND ORDERS

People v. Singh, Case No. E003466, an unpublished opinion filed December 3, 1987, by the California Court of Appeal, Fourth Appellate District, Division Two, affirming the judgment of conviction.

In re Singh, Case No. WHC 2262, an unpublished order, filed March 22, 1994, by the San Bernardino Superior Court issuing a writ of habeas corpus.

People v. Singh, Case No. E014389, an unpublished opinion filed August 15, 1995, by the California Court of Appeal, Fourth Appellate District, Division Two, reversing the judgment of the superior court.

Singh v. Prunty, Case No. CV-96-00057-RT, an unpublished order filed September 13, 1996, by the United States District Court for the Central District of California denying Singh's petition for writ of habeas corpus.

Singh v. Prunty, 142 F.3d 1157 (9th Cir. 1998), a published opinion filed April 27, 1998, by the Ninth Circuit Court of Appeals reversing the judgment of the District Court.

Singh v. Prunty, Case No. 96-56726, an order filed July 1, 1998, denying Petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc.

STATEMENT OF JURISDICTION

On April 27, 1998, the Ninth Circuit Court of Appeals issued a published opinion in Singh v. Prunty, 142 F.3d 1157 (9th Cir. 1998), reversing the District Court's denial of Singh's petition for a writ of habeas corpus. On July 1, 1998, the Ninth Circuit Court of Appeals denied Petitioner's petition for rehearing and suggestion for rehearing en banc. This Court has jurisdiction to review the Court of Appeals' opinion pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONS, STATUTES OR REGULATIONS

The Fifth Amendment of the Constitution of the United States provides in relevant part:

> . . . [N]or shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . .

The Fourteenth Amendment to the Constitution of the United States provides in relevant part:

> . . . [N]or shall any state deprive any person of life, liberty, or property, without due process of law . . .

28 United States Code, § 2254, subdivision (a) provides:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

On January 20, 1986, a jury convicted Jaitsen J. Singh of the August 27, 1983, murders of his wife, Grace Singh, and his 17-year-old adopted step-daughter, Daphne Singh, on a murder-for-hire theory. Singh was also convicted of one count of solicitation to commit murder. On August 21, 1986, Singh was sentenced to consecutive 25-year-to-life terms for the two murder convictions plus a consecutive six-year term for soliciting murder. Singh appealed and the California Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment. People v. Singh, Case No. E003466, filed Dec. 3, 1987.

On July 23, 1992, Singh filed a petition for writ of habeas corpus in the Superior Court of San Bernardino County claiming, inter alia,[1] that the trial prosecutor violated Brady v. Maryland, 373 U.S. 83 (1963) by failing to disclose a witness at Singh's trial, Raymond Copas, received benefits for his testimony. Following an evidentiary hearing, the superior court issued an order granting the petition for writ of habeas corpus. In re Singh, Case No. WHC 2262. The state appealed and on August 15, 1995, the California Court of Appeal, Fourth Appellate District, Division Two, issued an opinion reversing the superior court's grant of the writ of habeas corpus, People v. Singh, Case No. E014389.

The California Supreme Court denied Singh's petition for review, and Singh filed a petition for writ of

---

1. The other issues that were raised in the petition are irrelevant in this proceeding since the opinion by the Court of Appeals for the Ninth Circuit, which is the subject of this request for review, determined only the Brady issue.

habeas corpus in the United States District Court for the Central District of California (hereafter, "District Court"). On September 13, 1996, the District Court issued an order denying Singh's petition for writ of habeas corpus. Singh v. Prunty, Case No. CV-96-00057-RT.

Singh appealed to the United States Court of Appeals for the Ninth Circuit, and on April 27, 1998, the Court of Appeals reversed the order of the District Court, finding that the trial prosecutor failed to disclose material evidence to the defense. Singh v. Prunty, 142 F.3d 1157 (9th Cir. 1998). On May 6, 1998, Petitioner filed a petition for rehearing and suggestion for rehearing en banc which was denied on July 1, 1998.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ for two reasons: First, the Ninth Circuit Court of Appeals used an incorrect standard in concluding that Brady impeachment evidence was material; second, by completely ignoring the trial evidence, including Singh's own devastating testimony, the opinion by the Ninth Circuit Court of Appeals conflicts with Kyles v. Whitley, 514 U.S. 419 (1995), Wood v. Bartholomew, 516 U.S. 1 (1995), and Calderon v. Thompson, __ U.S.__, 118 S. Ct. 1499, 140 L. Ed. 2d 728 (1998). The petition therefore meets the considerations articulated in Rule 10, subdivisions (a) and (c) of the Rules of the Supreme Court of the United States.

The issue decided by the Ninth Circuit in this case was whether undisclosed information that witness Raymond Copas received some benefits for testifying at Singh's trial was "material evidence" as articulated in United States v. Bagley, 473 U.S. 667 (1985) and clarified in Kyles v. Whitley, 514 U.S. 419. Evidence is "material" only if a reasonable probability exists that, had it been disclosed, the outcome of the trial would have been different. Bagley, at 682. A "reasonable probability" is a

probability sufficient to undermine confidence in the outcome of the trial. Id. Instead of applying the Bagley standard, the Ninth Circuit applied a much weaker standard of materiality:

> "[O]ur fundamental concern remains whether there exists a reasonable probability that given disclosure of the evidence of benefits to Copas, one or more members of the jury would have viewed Copas' testimony in a different light. . . . [W]e believe there is a reasonable probability that had the evidence been disclosed to the defense, one or more members of the jury *could* have viewed Copas' testimony differently. Singh, 142 F.3d at 1163, emphasis added.

The appropriate inquiry in assessing materiality is whether the *outcome* of the trial *would* have been different, not whether *one or more members of the jury could have viewed the witness's testimony differently*. The latter inquiry substantially dilutes and weakens the Bagley-Kyles standard of materiality. Plainly, the term "would" in the Bagley-Kyles definition of materiality requires a greater showing than the term "could" used by the Ninth Circuit in determining the issue. See, Kirkpatrick v. Whitley, 992 F.2d 491, 497 (5th Cir. 1993).

Equally plain, the fact that one or more members of the jury could have, or even would have, viewed the witness's testimony differently does not equate with a reasonable probability of a different result. The standard used by the Ninth Circuit fails to take account of the jury deliberation process where skeptical jurors could be swayed to a different position. More importantly, the standard used by the Ninth Circuit necessarily excludes consideration of the likelihood that a different result was *not* probable due *to the other trial evidence presented*, even

though undisclosed impeachment evidence could have caused one or more jurors to view the witness's testimony differently.

The Ninth Circuit's use of an incorrect standard of materiality also spawns a related, but independent, error resulting in an opinion that conflicts with this Court's Brady jurisprudence and Calderon v. Thompson. An assessment of materiality, as articulated in Bagley and Kyles, necessarily requires considering the totality of the trial evidence. Without such consideration, it is impossible to answer whether a reasonable probability exists that, had the evidence been disclosed, the outcome of the trial would have been different. Whether the trial resulted in a verdict worthy of confidence cannot be determined without considering the totality of what was presented at trial.

Although the opinion from the Ninth Circuit initially states the correct standard of materiality and cites to Bagley and Kyles, the Ninth Circuit's determination of materiality actually uses the weaker, incorrect standard. Singh, 142 F.3d at 1161-1162. The utilization of the incorrect standard allows, and indeed results, in a determination on the materiality issue without any consideration whatsoever of the vast array of independent and corroborating evidence which overwhelmingly points to Singh's guilt. Nowhere in the materiality analysis does the Ninth Circuit acknowledge, address, or even reject, any of the trial evidence other than that pertaining to Raymond Copas, the witness who is the subject of the undisclosed impeachment evidence.[2] This is not a case of erroneous factual findings by the Court of Appeals; it is a case of complete failure to even consider the facts in

---

2. The sole reference by the Ninth Circuit to the trial evidence is the general statement, in the statement of facts, that "[t]he record is replete with circumstantial evidence pointing to Singh's knowledge and motive for a planned murder . . ." Singh, at 1158.

making the materiality determination. The failure to do so directly conflicts with the standard of materiality set forth in Bagley and clarified in Kyles. Bagley, 473 U.S. at 678; Kyles, 514 U.S. at 434-435.

Additionally, the Ninth Circuit's decision in this case dramatically conflicts with Kyles under even the most superficial comparison of the circumstances and facts in Kyles with those in the present case. Kyles involved suppression by the prosecution of a huge array of evidence, including critical evidence suggesting that someone else other than Kyles was the killer. Kyles, at 428-431. In contrast, the prosecutor in this case failed to disclose additional impeachment evidence about witness Raymond Copas, who had already been severely impeached. Copas had been painted as a career criminal, a heroin addict, and a liar to the jury. The additional impeachment evidence that was not disclosed was that Copas received some benefits for being a witness at Singh's trial, the primary benefit being that Copas' pending burglary cases were continued until after he testified. There was no withholding of evidence directly pertaining to the issue of Singh's guilt, and the trial evidence reflects a wealth of independent, corroborating and compelling evidence of Singh's guilt.[3] Compare, Kyles with Appendix, A-65-A-86. The contrast between the two cases renders this case contrary to Kyles.

The Ninth Circuit's opinion in this case is also in conflict with this Court's opinion in Thompson v. Calderon. Thompson recognized the importance of a defendant's testimony to the jury's verdict and that such testimony can be devastating to the defense. Thompson, 118 S. Ct. at 1503-1504. Like Thompson, Singh's own

---

3. The State Court of Appeal described the evidence against Singh as "crushing" (Appendix, A-62), and the District Court noted "the trial evidence of [Singh's] culpability was overwhelming even without Copas' testimony." (Appendix, A-90.)

testimony was devastating to his defense, and in essence turned him into an extremely important witness for the prosecution. (Appendix, A-62, A-91 [State Court of Appeal noted Singh provided "outlandish 'explanations'" for the evidence against him; District Court noted "the implausibility of [Singh's] attempts to explain away a wealth of incriminating evidence against him"].) It has never been disputed that Singh's testimony was a disaster, yet remarkably the Ninth Circuit fails to give any recognition of this fact in its opinion.

By ignoring the trial evidence, the Ninth Circuit's opinion is also contrary to this Court's opinion in Wood v. Bartholomew. In Bartholomew, this Court reversed the Ninth Circuit Court of Appeals and determined that there was not a reasonable probability of a different outcome at trial had undisclosed polygraph results been revealed. In so holding, this Court noted the case against Bartholomew was overwhelming even without the testimony of the witness at issue. Bartholomew, 516 U.S. at 8. Under the Brady jurisprudence of this Court, the Ninth Circuit's failure in this case to address the overwhelming evidence of Singh's guilt in making its materiality determination is error.

In Bartholomew, this Court recognized that the granting of a writ to a state prisoner exacts a great cost to the state's legitimate interest in finality, a cost and burden that are compounded when, as in this case, retrial would occur almost 13 years later. Bartholomew, at 8. Those burdens and costs may be justified where a constitutional error has created serious doubts about the reliability of a trial. However, where a court of appeals grants habeas corpus relief "on the basis of little more than speculation with slight support, the proper delicate balance between the federal courts and the States is upset to a degree that requires correction." Bartholomew, at 8. That is precisely what has happened in this case. Failure to take corrective action would not only work a grave injustice in this case,

but would additionally create the danger that the Ninth Circuit Court of Appeals, or the Court of Appeals for other circuits, may use the same incorrect standard of materiality and defective analysis in deciding Brady issues.

CONCLUSION

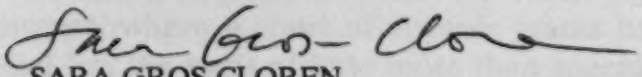
The Ninth Circuit used an incorrect standard in determining whether the prosecutor failed to disclose material evidence. Instead, the Ninth Circuit used a substantially weaker standard than the Bagley-Kyles standard. The result is that the Ninth Circuit's materiality analysis focuses only on the witness at issue; no acknowledgment or consideration is given to the remaining vast array of compelling evidence of guilt, including Singh's own devastating trial testimony.

This Court should grant the Petition for Writ of Certiorari because the Ninth Circuit's opinion conflicts with United States Supreme Court precedent and to prevent the Ninth Circuit and other courts of appeals from using an erroneous standard of materiality in addressing Brady claims in future cases.

Dated: July 29, 1998.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General
GEORGE WILLIAMSON
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
WILLIAM M. WOOD
Supervising Deputy Attorney General



SARA GROS-CLOREN
Deputy Attorney General
Counsel of Record

Counsel for Petitioner

SGC:ab

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

No: _____
October Term, 1998

K.W. PRUNTY, Warden, et al.,

Petitioners,

110 West A Street, Suite 1100
P.O. Box 85266
San Diego, CA 92186-5266

v.

JAITSEN J. SINGH,

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 1100, San Diego, California 92186-5266.

I have served the within PETITION FOR WRIT OF CERTIORARI WITH APPENDIX as follows: To William K. Suter, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and forty (40) copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Dennis P. Riordan
Attorney at Law
523 Octavia Street
San Francisco, CA 94102

Hon. Robert J. Timlin
United States District Court
312 North Spring Street. Ste. G-8
Los Angeles, CA 90012-4793

Dennis L. Stout
District Attorney
316 N. Mountain View Ave.
San Diego, CA 92415

United States Court of Appeals
Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 31st day of July 1998.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, July 31st, 1998.

Anne Marie Buford

ANNE MARIE BUFORD

CALIFORNIA

ALL-PURPOSE

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF San Diego)

On 7/31/98 before me. Christine J. Kaul, Notary Public .
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Anne Marie Buford

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Christine J. Kaul
NOTARY PUBLIC SIGNATURE (SEAL)

PWR1 THE GREAT SEAL OF THE STATE OF CALIFORNIA CHRISTINE J. KAUL Comm. # 1034176 NOTARY PUBLIC CALIFORNIA San Diego County My Comm Expires July 31, 1998 PWR1

OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT Affidavit of Service by Mail

DATE OF DOCUMENT 7/31/98 NUMBER OF PAGES 1

SIGNER(S) OTHER THAN NAMED ABOVE _____

BEST AVAILABLE COPY